Pepsi-Cola Company *and* Soft Drink Workers Local 812, International Brotherhood of Teamsters, AFL–CIO.[1] Cases 2–CA–23127, 2–CA–23626, and 2–CA–23989

July 20, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On May 15, 1991, Administrative Law Judge Steven Davis issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs and the Respondent filed cross-exceptions and a supporting brief. The General Counsel filed an answering brief in response to the Respondent's exceptions, and the Respondent filed briefs in opposition to both the General Counsel's exceptions and the Charging Party's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[2] and to adopt the recommended Order.

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] After the judge issued his decision, the Supreme Court issued its decision in *Lechmere, Inc. v. NLRB*, 112 S.Ct. 841 (1992), 139 LRRM 2225. In that case, the Court denied private property access to nonemployee union agents who sought access for the purpose of communicating an organizational message to employees. On March 4, 1992, the Board in the present case issued a Notice to Show Cause to the parties why the allegation that the Respondent violated Sec. 8(a)(1) of the Act by denying access to its property to nonemployee union organizers should or should not be dismissed.

The General Counsel, in response, filed a motion to withdraw the outstanding complaints in Cases 2–CA–23626 and 2–CA–23989. The General Counsel conceded that the Respondent's employees are not so isolated as to be beyond the reach of reasonable union efforts to communicate with them as required by *Lechmere*.

The Respondent also filed a response to the Notice to Show Cause. The Respondent argues that the Supreme Court's decision in *Lechmere* mandates that the complaints in Cases 2–CA–23626 and 2–CA–23989 be dismissed. The Respondent contends that there are no ''unique obstacles'' preventing nontrespassory methods of communication with employees and, thus, that there is no violation of the Act under *Lechmere*.

The Charging Party Union did not respond to the Board's Notice to Show Cause.

Accordingly, in the absence of opposition, we grant the General Counsel's motion to withdraw the complaints in Cases 2–CA–23626 and 2–CA–23989.

In light of our decision to permit withdrawal, we find it unnecessary to pass on the judge's denial of the Respondent's motion to dismiss the complaint in Case 2–CA–23626.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Rhonda E. Gottlieb, Esq., for the General Counsel.
Duane C. Aldrich and *Diane L. Prucino, Esqs. (Kilpatrick & Cody, Esqs.)*, of Atlanta, Georgia, for the Respondent.
Sidney Fox, Esq. (Shapiro, Shiff, Beilly, Rosenberg & Fox, Esqs.), of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Pursuant to charges filed by Soft Drink Workers Union Local 812, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (Union) on October 1, 1988, in Case 2–CA–23127, on May 12, 1989, in Case 2–CA–23626, and on December 5, 1989, in Case 2–CA–23989, separate complaints were issued on January 7 and June 8, 1989, and January 9, 1990, respectively, against Pepsi-Cola Company (Respondent). The complaints were consolidated for hearing pursuant to Order dated January 18, 1990.

The complaints allege essentially that Respondent:

> (a) Distributed a memorandum to its employees which threatened them with loss of their right to speak directly with management about certain terms and conditions of employment if they joined the Union, and instructed them to inform Respondent if the Union threatened, harassed or interfered with them, and invited and encouraged them to report to Respondent the identity of Union card solicitors.
>
> (b) Refused to permit Union representatives to enter upon its facility for the purpose of communicating with its employees in connection with an organizing campaign.
>
> (c) Advised Union representatives that they could not remain on Respondent's facility for the purpose of communicating with its employees in connection with an organizing campaign, and ordered the Union representatives to leave, and threatened them with arrest if they did not leave Respondent's facility. The complaint further alleges that the Union has no other reasonable alternative means of communicating with the employees it seeks to organize other than by access to the Respondent's facility.

Respondent's answers denied the material allegations of the complaints and set forth certain affirmative defenses, which will be discussed infra.

On May 15–17, 1990, a hearing was held before me in New York City.[1] On the entire case, including my observation of the demeanor of the witnesses and after consideration of the briefs filed by Respondent and the General Counsel, I make the following[2]

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Delaware corporation, having its world headquarters located in Somers, New York, is engaged in the marketing of soft drink products. Annually, Respondent purchases and receives at its Somers facility goods and materials valued in excess of $50,000 directly from suppliers located outside New York State. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent also admits and I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Background

Respondent opened its world headquarters in Somers, New York, in mid-1987, consolidating operations from several locations in Westchester County, New York. The headquarters building comprises 516,000 square feet and is situated in a rural area on 211 acres. About 1100 employees are employed at this facility, including 150 to 200 secretaries, about 100 additional clerical employees, and about 12 mailroom workers.

The Somers, facility is bordered by two highways. Route 35 borders the facility on the west, off which two entrances to Respondent's property, A and B, are located. Route 100 borders the facility on the north, off which entrance C is located. Both highways have speed limits of 55 miles per hour.

Route 35 is a two-lane highway. As one approaches entrance A, the northbound lane separates into two lanes, one being a deceleration lane which leads into Respondent's facility. The deceleration lane turns to the right, leading into Respondent's driveway. About 15 to 20 feet from the highway, that entrance lane widens into two lanes which continue through Respondent's facility. There are two exit lanes from which traffic exits Respondent's driveway onto Route 35. A traffic light controls the exit access. A flat, grassy area borders the entering and exiting driveway lanes, and a grassy median separates the entrance and exit lanes. The median is about 20 feet wide at its widest point, where it meets Route 35.

Respondent's entrance and exit driveways at entrance A are not totally owned by it. From the intersection of Route 35 to a point 225 feet along the driveway, the traffic lanes leading to its property, including the median between the lanes and the grassy border area are public property, owned by New York City and New York State.

Directly across from entrance A, on the western side of Route 35, is a vehicle emergency breakdown lane, which is on public property.

Entrance A is the most popular source of entry into Respondent's property. During the morning rush hour, nearly 43 percent of all vehicles entering the facility enter through entrance A.

Entrance B is located about 1000 feet north of entrance A. Entrance B also intersects with Route 35. A deceleration lane leads into Respondent's driveway when traveling north on Route 35. The single entrance lane widens into two lanes about 20 feet from Route 35. Vehicles traveling southbound on Route 35 may turn into entrance B by making a left turn at the entrance. There are two exit lanes from entrance B onto Route 35. No traffic signal controls the exit lanes, but there was evidence that drivers had to stop their vehicles before entering Route 35 in order to check for traffic. A flat, grassy area borders the entry and exiting driveway lanes, and a grassy median separate the entry and exit driveways.

One hundred feet from Route 35 into the entrance and exit driveways of entrance B, including the median and grassy border areas, are publicly owned, and are not owned by Respondent.

Directly across from entrance B, on the western side of Route 35, there is a vehicle emergency breakdown lane, which is also on public property.

Entrance C is situated on Route 100, located on the northern boundary of Respondent's property. Vehicles traveling east on Route 100 turn into the single lane driveway which widens into two lanes about 20 feet from Route 100. Vehicles traveling west on Route 100 make a left turn into the entrance. There are two exit lanes onto Route 100 from entrance C. Although there is no traffic light controlling this entrance, there was evidence that vehicles must stop before entering Route 100 due to traffic.

Bordering the entry and exit driveways at entrance C are flat, grassy areas. There is also a grassy median about 10 feet wide, separating the entry and exit driveways. Respondent's property begins 16 feet from Route 100. The area between Route 100 and Respondent's property line is public land.

A privately owned parking lot is situated directly across Route 100 from entrance C. The Union rented this area to station a van which it used during the incidents at issue.

About 28 percent of all vehicles entering the facility during the morning rush hour use entrances B and C.

Respondent's property line is marked on all the entrance and exit driveways by painted white lines.

Respondent has posted 2-mile-per-hour speed limit signs on its entrance driveways.

2. Respondent's restrictions on the use of its property

Respondent has marked its property extensively to indicate where its boundaries are located. Concrete monuments 2 feet tall are located at the corners of its property wherever its property line takes a sharp turn. There are also metal or wooden stakes with orange painted tops embedded into the

[1] At the hearing, Respondent moved for a protective order directing that excerpts from its security manual, received as an exhibit, which contains information relating to the security measures undertaken to protect its employees and facility, be sealed, and on the close of the proceeding, returned to Respondent. The General Counsel and the Union do not object to this motion. Respondent's motion is granted. *Dubuque Packing Co.*, 287 NLRB 499, 534 fn. 102 (1987).

[2] Respondent's unopposed motion to correct the transcript is granted. The motion has been attached to Respondent's brief.

ground at points 150 feet apart along the entire boundary of its property.

There are also ''posted'' signs in the wooded area of Respondent's land. They state: ''POSTED. PRIVATE PROPERTY. HUNTING, FISHING, TRAPPING OR TRESPASSING FOR ANY PURPOSE IS STRICTLY FORBIDDEN. VIOLATORS WILL BE PROSECUTED.''

Respondent's facility was designed in order to maintain its seclusion for the purpose of having a productive, safe environment. Its headquarters building is situated 2275 feet from the nearest driveway entrance. Only those persons having business on Respondent's property are permitted entry thereto. Employees have photo identification cards and employee stickers are affixed to their vehicles. Business visitors to the facility are issued passes.

Respondent employs a security guard force around the clock, which polices its grounds to ensure that no outsiders enter its property. Its fitness center is for use by employees only. Spouses may accompany employees to the fitness center on weekends but are not permitted to use the facilities. On occasion, outside organizations, such as Weight Watchers make presentations to Respondent's employees in the fitness center. The softball fields and tennis courts are also for use by employees only. Nonemployees may watch games on the playing fields when they are invited by an employee who is playing. However, in a memo dated in July 1988, relating to a nonemployee's use of the softball field, it was noted that an exception to that policy is the ''express permission granted to Pepsi-Cola contractors; consultants, etc. to engage in softball competition with Pepsi employees on the . . . softball field.'' Trespassers, including hunters who hunted in the woods on Respondent's property have been escorted off the property, and in the case of the hunters, were arrested by the police.

Respondent's cafeteria may be used by its employees and their invited business guests.

Respondent has a conference center in its headquarters which consists of various conference rooms. In late October 1988, it decided to experiment with outside use of the conference center. It permitted three organizations to use the center. The groups, a teachers organization, the U.S. Census Bureau, and a local board of education, qualified for this program because they provided significant community or public services to the Somers area. In addition, on three occasions, groups of local school children were invited to listen to Respondent's employees describe their jobs. In 1990, Respondent canceled this program because of (a) abuses of the program by the groups, and (b) the fact that the groups had to pass through office areas on their way to the conference center was viewed as inconsistent with Respondent's security efforts.

Respondent also sponsors periodic Red Cross blood drives which take place in the conference center. Two such drives were held in 1989.

Respondent does not permit its internal mail system to be used for commercial purposes even by its employees, where, for example, an employee might send a flyer advertising a relative's business. Similarly, it does not permit the distribution of commercial material on its premises. U.S. mail addressed to an employee would be delivered to that person. Private announcements or flyers for commercial activities are not permitted on its bulletin boards.

Respondent has distributed information concerning a PepsiCo event—Summerfare—to its employees. Summer Fair is a cultural event held nearby.

Respondent also distributes to its employees on a daily basis, a summary of news articles concerning the beverage industry and the Company. One of its articles presented Respondent's position concerning the Union's distribution of literature.

With respect to information concerning its employees, various outside organizations, such as the United Way, and other commercial enterprises, requested lists of the names and addresses of the employees. Respondent refused these requests on the ground that such information was proprietary.

The personnel files of employees are maintained in the employee relations department. Supervisors seeking information concerning employees must request such information from the manager of employee relations. He determines what information is released to the supervisor, based on a ''strict need to know'' standard. Requests from outside organizations for information such as employment verifications, and credit data are handled by obtaining the employee's written consent to the release of such information.

3. The Union's organizing drive

The Union represents certain employees employed by PepsiCo, a separate company than Respondent, and it has collective-bargaining agreements with PepsiCo covering those employees.

Negotiations were held between PepsiCo and the Union for a renewal agreement to replace the one which expired on May 31, 1987. At about the time that the Somers' facility opened, negotiations between PepsiCo and the Union had broken down, and at the time of the hearing, no renewal agreement had been entered into.

Union Business Agent and Trustee Joseph Vitta testified that the Union sought to organize the clerical and maintenance employees at the Somers' facility, and accordingly, on October 17, 1988, began the first of four visits to that location. Union officials and members appeared at the facility on each occasion. None of them were employees of Respondent.

On October 17, the union delegation met across the highway from, entrance C, where a recreation vehicle rented by the Union was parked in the parking lot, which was also rented by the Union. The men erected a sign on top of the vehicle which said: ''Pepsi Employees Organizing Campaign Headquarters.'' In preparation for handbilling the vehicles entering Respondent's premises, the handbillers were instructed to be courteous, stand on opposite sides of the driveway leading into the facility, and not block any vehicles entering or leaving the facility.

Handbilling that day began at about 7:30 a.m. and ended at about 9:15 a.m. The documents distributed included a union authorization card, and a paper which stated that the Union sought to organize the Somers' employees, attempted to persuade the workers of the benefits of joining the Union, and promised a continued effort to represent them.

Vitta testified as to the handbilling efforts at entrance C. He and another union official stood on opposite sides of the entrance driveway. They presented a leaflet with an extended arm. If the car stopped or slowed, Vitta walked to it and gave the occupant a leaflet and asked him to read it. At that

entrance, 10 to 12 percent of all cars entering accepted the union literature.

Difficulties encountered at that entrance, according to Vitta, included vehicles entering the facility at a high rate of speed, and Respondent's security people or employees standing directly behind them, waving cars through. Respondent's security people told the union agent that they could not go past a property marker—a wooden stake with an orange top. The union agents attempted, at times, to walk up the driveway, into Respondent's property, in order to be in an area where entering vehicles would be able to slow down easier. On those occasions, Respondent's security employees told them to move back to their original position.

Leafletting also occurred at entrances A and B. The same procedure was used at those entrances, with leafleteers standing on both sides of the entry driveway. Vitta testified that entering traffic was heaviest at entrance A, with vehicles entering at a high rate of speed, making a sharp turn into the driveway. He encountered difficulty in handbilling at that entrance, because the cars entered quickly, with one behind the other. He transferred one handbiller from the entrance A driveway, and stationed him in the passenger side on the highway's deceleration lane. That person, holding a leaflet in his hand, sought to attempt to have entering vehicles slow down before they entered the driveway.

Union member Joseph Lower also leafletted at entrance C that day. He stated that a couple of times, entering vehicles nearly hit him because of his position on the driveway. In addition, cars which stopped to receive a leaflet caused vehicles following them to stop, and as a result traffic was backed up onto the highway.

Vitta testified that Respondent's security personnel were present at all three entrances that day.

Vitta saw no one enter or leave the premises on foot.

Union member Michael Mango stated that the entering vehicles were traveling ''pretty fast'' at entrance A. He encountered difficulties including the danger of fast moving vehicles. Mango distributed leaflets to about 15 percent of the 70 to 80 entering vehicles.

John McWilliams, the manager of headquarters employee relations at Somers, testified that on October 17 he received inquiries from employees concerning the handbilling. Specifically, employees complained that the handbilling was dangerous, the solicitors stepped out in front of them as they tried to walk in, an employee was photographed in his car; and it was a disruption, generally. In response, Respondent distributed a memo to its employees from Michael Feiner, its senior vice president for personnel. Inasmuch as the letter has been alleged as an unfair labor practice, it is set out here in full:

> I want to apologize to you for any inconvenience you encountered coming to work this morning. The group of outsiders who harassed you are from Teamsters Local 812. Unfortunately, we know them all too well. They have historically resorted to this type of intimidation, which is nothing more than a clumsy attempt to increase the size of their local.
>
> Let me give you the real story behind this morning's demonstration. Disregarding the interests of their own membership, this Teamster local is making a desperate membership, this Teamster local is making a desperate attempt to further its own interests in a contract dispute that has been going on for nearly eighteen months at PepsiCo in Purchase. You may recall that back in May 1987, Local 812 was totally unable to settle a labor agreement in Purchase. They resorted to press releases, picketing PepsiCo Summerfare and even soliciting support from Mikhail Gorbachev, the President of the Soviet Union! And in those eighteen months they accomplished *nothing* for the people they supposedly represent.
>
> Now they're trying to involve you in that dispute. They're not looking out for your interests anymore than they are serving the interests of the PepsiCo employees. They want you and your money to finance their campaign at Purchase. I am sure you noticed that among the flyers they handed out this morning was a small, seemingly innocent envelope. Well, this envelope is not innocent at all—it's an *authorization card*. It basically asks you to become a member of the Teamsters Union and to *surrender your right to Speak for yourself.*
>
> Don't sign this card!
>
> You know that we don't need a union here, especially this union. All of us have worked hard to make Pepsi-Cola in Somers a premier employer in Westchester. Our compensation and benefit programs are first rate and no union has the insight or the resources to improve on them. More importantly, we have an open and supportive work environment here which has as its foundation the fair and equitable treatment of all employees. Teamster Local 812 wants you to give them the right to interfere in that environment, wants you to let them speak for you.
>
> Let me tell you how they ''spoke'' for their members in Purchase on the issue of Summer Hours. It took six years for Local 812 to agree to give their members the Summer Hours Program despite the fact that the vast majority of the employees wanted the program!
>
> Demonstrations like the one this morning will probably continue for some time. We will do everything possible to ensure that you are not harassed or threatened. They have no right to interfere with your entry into our headquarters. If that happens let us know immediately, and we will get it stopped.
>
> I have asked John McWilliams, Manager of Employee Relations, to be available to any one of you who have a question or a concern. You can reach John at extension 7442.
>
> I'm sure all of us would like to see this disruption end. The best way to accomplish this is to ignore the demonstrators and to not sign anything. [Emphasis in original.]

McWilliams stated that he instructed Respondent's security force to leave the handbillers alone as long as they did not block ingress or egress to the facility, create a safety hazard, or infringe upon its property.

On October 24, union agents again handbilled entering vehicles in the same manner and for the same period of time as they had on October 17. They distributed authorization cards and a leaflet dealing with employees' rights under the Act. Security guards warned them not to enter Respondent's

property. Vitta testified that at all entrances cars were traveling at too great a speed to slow down sufficiently to receive the papers. He stated that if a car was traveling slowly enough to stop and obtain a leaflet, the car immediately behind that one honked its horn, and traffic began to back up onto the highways. He also stated that there was limited visibility at entrances A and C due to the sharp turns, and the wooded area at entrance C. About 10 to 12 percent of the cars accepted leaflets at the three entrances.

On November 14, Union President Anthony Rumore sent a letter to Respondent's president, set forth below in relevant part:

> I would like to sit down with you for the purpose of discussing what can be worked out with reference to our Union having access to your property in Somers, New York so that during our Union's organizational campaign we may be able to communicate with the employees.
>
> As you know, we have attempted to communicate with the employees as they come to work, but it has turned out not to be practical. We have attempted to find alternate means of communicating the Union's message to the employees, but we find that there are no alternate means of communication.

On November 18, Respondent's official Feiner replied to the letter, in relevant part, as follows:

> We believe that granting your request for access to our property for the reasons you have described would be inappropriate and would disrupt our operations. Quite frankly, we are somewhat puzzled by your request for access since you currently have the same access to our employees that has traditionally been available to unions attempting to organize employees. In any event, the access you are requesting would, in our view, constitute a severe intrusion on the rights of our employees to perform their jobs without being distracted or interrupted.

December was ''Pepsi Family Christmas Day,'' an event in which all of Respondent's employees employed at Somers were invited to bring their families to the facility to participate in various holiday activities. Invitations and parking passes were issued to employees. About 5000 people visited the premises that day.

Also present were union agents, some of whom were dressed in Santa Claus outfits. They distributed a booklet describing the Teamsters Union which contained an authorization card, information concerning the benefits of the Union, and a cartoon related to officials of the Company.

There was great confusion at the driveways that day. Vehicles entering the facility apparently believed that the Santa Clauses were Respondent's representatives, and asked questions of them concerning parking and invitations. Traffic was extensively backed up onto the highways as a result of this activity. Security personnel waved cars into the entrances. The union agents leafletted for about 2-1/2 hours in the same manner as before. Literature was given to about 50 percent of the vehicles entering the premises.

On May 1, 1989, Union President Rumore wrote to Respondent's official, Feiner, which stated in relevant part:

> We still have not been able to gain access to your premises in order to discuss with your employees why we think they should join [the Union].
>
> In order for Local 812 to transmit its message to your employees, we request that you furnish to us the names and addresses of your employees. This is the only feasible way that we have to get in touch with your employees other than to have access to your premises.

On May 5, Feiner replied, denying the Union's request for the names and addresses of Respondent's employees. He stated that ''our overriding concern is the legitimate expectation of our employees to be protected from unwarranted invasions of their privacy. Complying with your request would evidence a blatant disregard of our employees' privacy rights.''

Respondent's attorney, Duane Aldrich, testified that on June 1, 1989, he met with Union Attorney Sidney Fox, and Union President Rumore at the Union's office to discuss resumption of collective-bargaining negotiations between the Union and PepsiCo. Aldrich stated that he told Fox and Rumore that the Employer sought to reach agreement and settle the matter. According to Aldrich, Rumore replied that ''if we could make real progress in the Purchase negotiations . . . [we] would leave Summerfare alone and would leave Somers alone.'' Fox interrupted Rumore, and Rumore went on: ''No, I mean it, Sidney. If we can get this done then we'll take the vehicle out of Somers and we'll leave Somers alone.''

Fox testified that he recalled a meeting with Respondent's attorney at the Union's office, but he did not recall the details of that meeting. Rumore did not testify concerning this matter.

On November 9, union agents distributed handbills at Respondent seeking support for its strike against Pepsi Cola Bottling Company in Purchase, New York. That company is a franchisee unrelated to Respondent.

Union Official Vitta testified that on the morning of November 30, 1989, he and other union agents visited entrance C at the Somers facility. The weather that morning was cold, with much frost and poor visibility. They decided to move further into the driveway where the handbilling would be done in a safer manner. The area that they went to was the intersection of driveways leading from entrances B and C, having stop signs at three of the four corners. The intersection was about 500 feet into Respondent's property from entrance C.

When the vehicles approached the stop signs the union agents distributed leaflets, including one previously handed out on December 21, 1988. After 15 or 20 minutes of leafletting, they were told by a security guard that they were on private property and had to leave. Union Official Vitta protested that the area they previously leafletted in was unsafe. Another guard arrived, told them they were trespassing, and warned that if they did not leave, the police would be called. She suggested that they conduct their activity at entrance C. They then left without conducting further leafletting because they believed that it was too dangerous to do so. The agents distributed about 80 leaflets in the 45 minutes they were present on Respondent's property.

Employee Relations Manager McWilliams testified that he told Respondent's security force to watch the van and advise him of any activity related to the van, such as when it began and ended. They were not told to put the van under surveillance—only to observe it in their regular patrol.

The Union's van was removed from the lot opposite entrance C in the summer of 1989.

4. The Union's means of communicating with employees

The Union claims that handbilling at the Respondent's entrances is unsafe because of the excessive speed of vehicles entering Respondent's property. Union member Joseph Lower testified that on October 17, 1988, he estimated the speed of such vehicles entering entrance C at between 35 and 40 miles per hour. In contrast, Respondent's officials stated that the entry speed is 15 to 20 miles per hour at all entrances.

A radar speed study performed by Respondent in the morning rush hours in April 1990 showed that the average speed of vehicles entering entrances A, B and C, was 19.17, 16.36, and 17.40 miles per hour, respectively.

Union Official Vitta testified that the Union did not handbill during the afternoon when employees left work at the end of the day because it was his experience that employees leaving work were anxious to get home and did not wish to be ''bothered'' by handbillers. He also stated that he was concerned that handbilling in the evening would be unsafe because the handbillers might block the drivers' sight when they sought to enter the highway.

With respect to motor vehicle records, Kathleen Ward, Respondent's security supervisor, testified that she made personal visits to the Department of Motor Vehicles in New York, Connecticut, and New Jersey, requesting the names and addresses of individuals whose license plate numbers she supplied to those agencies. She paid a fee of $5 per number in New York, and 75 cents in Connecticut and received the information requested.

B. *Analysis and Conclusions*

1. The letter to employees

The complaint alleges that the Feiner memorandum of October 17 violated Section 8(a)(1) of the Act because it (a) threatened Respondent's employees with loss of their right to speak directly with management about their wages, hours, and other terms and conditions of employment if they should join the Union, and (b) instructed employees to inform Respondent if the Union threatened, harassed, or interfered with them, or otherwise invited and encouraged employees to report to Respondent the identity of union card solicitors.

The text of the memorandum is set out in full, supra. The allegedly offensive parts of the letter are as follows:

> [The] authorization card . . . asks you to become a member of the Teamsters Union and to surrender your right to speak for yourself.
>
> More importantly, we have an open and supportive work environment here which has as its foundation the fair and equitable treatment of all employees. Teamster Local 812 wants you to give them the right to interfere in that environment, wants you to let them speak for you.
>
> Demonstrations like the one this morning will probably continue for some time. We will do everything possible to ensure that you are not harassed or threatened. They have no right to interfere with your entry into our headquarters. If that happens let us know immediately, and we will get it stopped.
>
> I have asked John McWilliams, Manager of Employee Relations, to be available to any one of you who have a question or concern. You can reach John at extension 7442.

With respect to the complaint allegation that Respondent threatened its employees with loss of their right to speak directly with management if they should join the Union, I find that Feiner's statement that by selecting the Union the employee surrenders his right to speak for himself does not violate the Act.

In *Tri-Cast, Inc.*, 274 NLRB 377 (1985), the Board considered an employer's statement that if a union organizes the shop, the employer's relationship with its employees would change—that their previously informal, person-to-person dealings would become different, and that matters would be handled by the book, with a stranger, and it would not be able to handle personal requests as it had before. In finding that those statements did not constitute objectionable election conduct, the Board stated:

> The Employer's statement . . . simply explicated one of the changes which occur between employers and employees when a statutory representative is selected. There is no threat, either explicit or implicit, in a statement which explains to employees that, when they select a union to represent them, the relationship that existed between the employees and the employer will not be as before.

In *Pembrook Management*, 296 NLRB 1226 (1989), the Board, citing *Tri-Cast*, found that an employer's statements that employees would have to go to a shop steward, and not to the employer, with job related matters, was not an unlawful threat. Citing *Tri-Cast*, the Board held that the statements imparted a ''mere fact of industrial life'' and were not coercive threats. Statements that employees would be giving up their right to speak for themselves have been found to be nonobjectionable. *John Galbreath & Co.*, 288 NLRB 876 (1988); *General Electric Co.*, 255 NLRB 673, 687–688 (1981).

I accordingly find and conclude that Respondent's statement did not violate the Act.

With respect to the complaint allegation that Respondent instructed its employees to inform it if the Union threatened them, or otherwise invited and encouraged employees to report the identity of union card solicitors, I find no support for this allegation in the Feiner memorandum.

The memo dealt with the union ''demonstration'' on October 17—the first day of handbilling of employee vehicles as they entered the premises. Employees had reported their belief that the manner in which the handbilling was performed was not safe. The memo advised employees that Respondent would do all it could to prevent harassment or threats to employees, and that the Union had no right to interfere with

their entry in the premises. Respondent also advised them that if any of these actions occurred it should be informed immediately.

Respondent's memo was issued on the first day of the Union's handbilling activity, and clearly referred to the handbilling. The General Counsel's reliance on *Colony Printing & Labeling*, 249 NLRB 223 (1980), and *Bay State Ambulance Rental*, 280 NLRB 1079, 1083 (1986), is misplaced. Those cases involved statements by the employers that they should be informed if anyone caused employees trouble at work or pressured them to join a union. Here, in contrast, Feiner's memo did not relate Respondent's efforts to protect employees against threats or harassment with the Union's legitimate attempts to have employees join the Union. Rather, the memo addressed the ''demonstration''—the handbilling activity in which employees' cars were approached.

Respondent's advice to its employees that it would protect any interference with their Section 7 rights could not and does not constitute a violation of the Act.

2. Respondent's motion to dismiss

On July 5, 1989, prior to the opening of the hearing, Respondent filed a motion to dismiss Case 2–CA–23626, on the ground that certain allegations set forth therein differ from and are unrelated to the allegations in the charge filed in that case. Another ground stated by Respondent was that the General Counsel's response to the motion was untimely. Thereafter, papers were filed in opposition by the General Counsel, Respondent filed a reply brief, and the General Counsel filed a response. On March 7, 1990, Associate Chief Administrative Law Judge Edwin H. Bennett denied the motion to dismiss. He held that the motion could not be granted, absent a full record. He also held that the General Counsel's response was timely filed.

At the hearing, Respondent renewed its motion to dismiss, as to which I reserved decision.

The procedural history of this litigation must be reviewed in order to properly consider the motion.

On November 30, 1988, the Union filed a charge in Case 2–CA–23184, which alleged that on November 18, 1988, Respondent denied the Union's request for access to its property. On February 2, 1989, the charge was dismissed on its merits, essentially that reasonable alternative means of communicating with employees were available. The Union appealed the dismissal, and the Office of Appeals remanded the matter to the Regional Director. Thereafter, on June 13, 1989, the Union requested withdrawal of the charge, and the Office of Appeals approved the withdrawal on June 14, 1989.

On May 12, 1989, the Union filed a charge in Case 2–CA–23626, which alleged that the Respondent violated the Act in early May 1989 by refusing to provide the Union with a list of the names and addresses of its employees at its Somers facility. The charge also alleged that the Union was organizing the employees and needed the names and addresses so that it could transmit its message to them, and to enable them to ''avail themselves of their rights under Section 7 of the Act.''

A complaint was issued on June 8, 1989, in Case 2–CA–23626. The complaint alleged that Respondent violated the Act by denying the Union access to its property on November 18, 1988, for the purpose of communicating with its employees in connection with the organizing campaign. The complaint also alleged that the Union had no other alternative means of communicating with the employees other than by access to Respondent's facility.

Thus, the complaint allegation concerning the denial of access in November 1988 was identical to the allegation contained in the charge which had been dismissed upon its merits in Case 2–CA–23184. The complaint did not include an allegation concerning the alleged failure to provide the names and addresses of the employees, which was the only substantive allegation in the charge filed in Case 2–CA–23626, on which the complaint was issued.

On June 19, 1989, Respondent filed its answer to the complaint, in which it alleged, as an affirmative defense, that the complaint exceeded the scope of the charge filed. Thereafter, by motion dated July 5, 1989, Respondent moved to dismiss the complaint on the ground that the allegations in the complaint involving Respondent's alleged refusal to provide access to its property in November 1988 were unrelated to the allegations in the charge in that case, which alleged only Respondent's refusal to provide a list of names and addresses of employees in early May 1989.

On July 5, the same day that Respondent's motion to dismiss was sent, the charge in Case 2–CA–23626 was amended to state that in early May 1989, Respondent refused to grant to the Union ''access to its premises and facilities and/or access to the names and addresses of the employees.'' The charge further stated, inter alia, that the Union needs access to the property and/or names and addresses of its employees so that the Union may be able to transmit its message to them. The complaint was not amended to conform to the amendment of the charge.

The General Counsel filed a response to the motion to dismiss, Respondent filed a reply brief, and the General Counsel filed another response. As set forth above, on March 7, 1990, Associate Chief Administrative Law Judge Edwin Bennett issued an Order Denying Motion. In denying the motion, Judge Bennett noted that the amended charge could not ''resurrect the earlier timebarred and dismissed charge if indeed the only refusal [to grant access] occurred in November, 1988.'' He noted, however, that the amended charge alleges that refusals of access occurred in early May 1989. Judge Bennett further noted that the motion could only be resolved after a full record had been made.

On December 5, 1989, the Union filed a charge in Case 2–CA–23989, and a complaint was issued on January 9, 1990, which alleged that on about November 30, 1989, Respondent denied access to the Union to its property.

Respondent moves to dismiss the complaint in Case 2–CA–26326 on the grounds that the charge in that case is unrelated to the complaint, and is based on an untimely filed charge. The General Counsel argues that the complaint allegations are factually and legally related to the charge and amended charge in that case.

The complaint in Case 2–CA–23626 alleges Respondent's refusal to provide access to its property on November 18, 1988. That was the identical language set forth in the charge in Case 2–CA–23184, which had been dismissed in February 1989.

Respondent alleges that the access allegation in the complaint constitutes an improper attempt to reinstate the dismissed charge in Case 2–CA–23184. In *Ducane Heating*

Corp., 273 NLRB 1389 (1985), the Board held that a dismissed charge could not be reinstated outside the 10(b) period. In that case, the Board had dismissed a charge concerning the suspension of an employee. Later, following the filing of a charge concerning the discharge of that employee, the acting Regional Director revoked the dismissal of the suspension charge and issued a complaint, consolidating the suspension and discharge allegations. The Board stated that it would not permit the reinstatement of the charge alleging the suspension of the employee 10 months after the suspension. The Board noted that it need not discuss whether another pending charge would have supported the suspension charge under a ''closely related'' theory.

The General Counsel argues that the amendment to the charge in Case 2–CA–23626 made on July 5, 1989, cures any defect in the complaint. That amendment, however, states only that in early May 1989 Respondent refused to grant access to its property and to a list of names and addresses. It does not address the operative time in the complaint, November 1988. Moreover, the charge was not amended within 6 months of the alleged violations, November 1988. The only evidence of any alleged unlawful activity in May 1989 is the Union's request for, and Respondent's refusal, to provide a list of names and addresses of its employees. There is no requirement that it do so, and in any event, that allegation is not before me. The amended charge fails, by virtue of Section 10(b) of the Act, in its attempt to reinstate the dismissed charge which dealt with access to property.

The General Counsel argues, however, that *Redd-I, Inc.*, 290 NLRB 1115 (1988), supports its theory inasmuch as the complaint allegations are factually and legally related to the allegations in the underlying charge. *Redd-I* distinguished *Ducane* on the ground that *Ducane* involved an attempt to reinstate the ''dead allegations themselves without reference to any other pending timely charge.'' Id. *Redd-I*, however, involved an attempt to add to a complaint, allegations closely related to a pending charge. The Board in *Redd-I* noted that the question as to whether certain untimely allegations can be added to a complaint as closely related is separate from a decision on whether a dismissed charge containing the untimely allegations can be reinstated outside the 10(b) period.

Therefore the first question which must be answered is whether the allegations of the dismissed charge were improperly reinstated by their inclusion in the complaint. I do not believe that they were.

If a charge was filed and served within 6 months after the violations alleged in the charge, the complaint, although issued after the 6 months, may allege violations not alleged in the charge if they are closely related to the violations stated in the charge, and occurred within 6 months before the filing of the charge. *NLRB v. Union Coil Co.*, 201 F.2d 484, 491 (2d Cir. 1982). Here, the complaint which issued in Case 2–CA–23626 alleged violations (a refusal to provide access to Respondent's facility on November 18, 1988) not alleged in the charge in that case. The alleged violation occurred on November 18, 1988, and therefore its inclusion in the complaint was timely inasmuch as it allegedly occurred within 6 months of the charge filed on May 12, 1989, in Case 2–CA–23626. The question remains as to whether the violations in the complaint are closely related to those in the charge before us.

The facts establish that the complaint allegation of a refusal to provide access to Respondent's plant was included as an attempt, under *Redd-I*, to add the dismissed allegations to a pending, related charge. As set forth in the facts, above, the Union first leafletted at Respondent's premises in October 1988. By letter dated November 14, the Union requested access to Respondent's premises, which was refused. The Union thereupon filed the charge in Case 2–CA–23184, which alleged Respondent's refusal to grant it access to its property, in furtherance of the Union's organizational campaign. On February 2, 1989, the Regional Office dismissed the charge on the ground that the Union had reasonable alternative means of communicating with employees, namely two of the three entrances to Respondent's property. On February 22, the Union appealed the dismissal of the charge. On May 1, while the appeal was pending, the Union wrote to Respondent requesting that it furnish it with the names and addresses of its employees, which was refused. On May 12, the Union filed the charge in Case 2–CA–23626, alleging the refusal to supply the names and addresses of its employees. On June 8, a complaint was issued alleging Respondent's denial of access to its property in connection with an organizing campaign, and also alleged that the Union has no other reasonable alternative means of communicating with the employees. On June 14, the Union withdrew its appeal in Case 2–CA–23184.

In determining whether the complaint allegations are closely related to the allegations in the charge, *Redd-I* has required that certain factors be examined: (a) whether the otherwise untimely allegations are of the same class as the violations alleged in the pending timely charge; (b) whether the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in the pending timely charge; and (c) whether a respondent would raise the same or similar defenses to both allegations.

Applying the *Redd-I* analysis to this case, the complaint allegation involving the refusal to provide access to the facility and the allegation in the charge involving a refusal to supply the names and addresses of employees are of the same class because they involve alleged limitations upon the Union's organizational activities in violation of Section 8(a)(1) of the Act.

It is clear that the allegations in the complaint arose from the same factual situation and sequence of events alleged in the pending timely charge. Thus, as set forth above, the organizing drive prompted the requests involved above, namely the request for access and the request for the names and addresses of employees. The Union sought access to Respondent's employees for the purposes of its organizing drive. Although the two requests were 6 months apart, they were still part of the same campaign, which although sporadic, was ongoing. Moreover, the Union requested access to Respondent's facility in November 1988 because, according to its letter to Respondent, it was of the opinion that other means of communicating with employees were impractical. Later, in May 1989, when the Union requested the names and addresses of employees, it asserted that such information was the only feasible way to communicate with the workers, aside from access to the facility. Respondent's conduct is directed at the same object, to prevent the Union from securing access to its employees by means of its facility or their names and addresses. *Roslyn Gardens Tenants Corp.*, 294 NLRB

506 (1989). Accordingly, the same factual situation and sequence of events gave rise to the allegations in the charge and complaint.

A reasonable respondent would have preserved evidence as to the allegations set forth in the complaint even though they had been dismissed in Case 2–CA–23184. The complaint was issued in Case 2–CA–23626 at a time when the appeal of the dismissal of the charge in Case 2–CA–23184 was still pending. Thus, the complaint was issued on June 8, 1989, and the appeal was withdrawn on June 11. Thus, Respondent was on notice, at all times through June 8 that the Union's appeal of the dismissal may have been granted, and accordingly would have preserved evidence of those allegations.

I therefore find and conclude that the complaint allegation involving the refusal to grant access to Respondent's facility is closely related to the allegations concerning the refusal to provide a list of names and addresses of employees in the timely charge.

I accordingly deny the Respondent's motion to dismiss the complaint in Case 2–CA–23626.

3. The Union's right of access

Respondent's answer in Case 2–CA–23626 admits that since November 18 1988, it has refused to permit union representatives to enter its facility for the purpose of communicating with Respondent's employees in connection with an organizing campaign.

The Board's analysis in *Jean Country*, 291 NLRB 11 (1988), controls this case, involving a Union's access to private property. In that case, the Board established a balancing test whereby the relative strengths of the Section 7 right of the union is compared to the employer's private property right. The availability of reasonably effective alternative means of communication must also be considered.

With respect to Respondent's conduct, its facility, constituting its world headquarters, is located on private property, which it owns. It also owns the parking lot located entirely on its premises. The facility, which is not open to the public, is a self-contained unit with no other enterprises within its borders. Respondent has taken extensive measures to ensure that persons who are not business invitees are not permitted onto its property. I accordingly find that Respondent's property right is quite substantial. There is evidence that on three occasions Respondent permitted outside groups to use its conference center, on a basis of one group per month, and that that use of its conference center has been discontinued. There is further evidence that three groups of students were offered a career day presentation by Respondent. Further, there have been periodic blood drives by the Red Cross. The limited nature of these groups and activities does not diminish the strength of Respondent's property right. *Sentry Markets*, 296 NLRB 40 (1989).

The Union's Section 7 right consisting of its organizing of Respondent's employees, and in handbilling vehicles in pursuit of this object is strong. In its answer in Case 2–CA–23626, Respondent admitted that since about October 1988 the Union has conducted an organizing campaign among certain of its employees. However, Respondent adduced evidence at the hearing in order to prove that the Union was not interested in organizing the employees of Respondent, but rather engaged in certain conduct in order to put pressure on parent PepsiCo to conclude collective-bargaining negotiations that had until then not been successful. The two are not mutually exclusive. The fact that the Union may have been interested in successfully concluding the negotiations does not mean that it was not interested in organizing certain employees of Respondent. The Union undertook its organizing campaign in the standard fashion by leafletting employees, distributing authorization cards and handbills urging employees to join its ranks. The fact that some of the leaflets may have concerned the Union's dispute with PepsiCo, or may have been used months before, does not mean that the Union did not also have an object of organizing certain of Respondent's employees. Union Official Rumore's statement that the Union would leave Somers alone if progress were achieved in the collective-bargaining negotiations with PepsiCo, does not prove that the Union had no organizational purpose in conducting its activities at Somers.

Accordingly, ''[t]he right to organize is at the very core of the purpose for which the NLRB was enacted. . . . [T]he interests being protected . . . are not those of the [nonemployee union] organizers but of the employees located on the employer's property.'' *Sears, Roebuck & Co. v. San Diego County District Council of Carpenters*, 436 U.S. 180, 206 fn. 42 (1978), citing *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956). The only intrusion upon Respondent's property occurred on November 30, 1989, when union officials stood at the intersection of roads leading from entrances B and C, and leafletted the cars as they stopped at the stop signs which controlled that intersection. There was no evidence that this activity interfered with the vehicles' progress further into the Respondent's premises, other than the brief time it took to handbill the cars. I accordingly find that the Union's Section 7 right is strong, and the manner in which the Union engaged in its conduct does not diminish the strength of the Section 7 right. It should be noted that the General Counsel is not seeking an order requiring that Respondent cease and desist from prohibiting entry onto its property for the purpose of handbilling at the intersection discussed above. Rather, the General Counsel seeks an order permitting handbilling in Respondent's parking lots, where such handbilling had never been attempted.

With respect to the Union's alternative means of communicating with Respondent's employees, the Union handbilled on public property at the entrances to Respondent's facility. As set forth above, deceleration lanes at entrances B and C onto Respondent's property from Route 35 lead onto driveways into Respondent's facility. Public property continues from the highway to a point along Respondent's driveway. Thus, at entrance A, the first 25 feet from the highway to Respondent's property line along its driveway constitutes public property. Entrance B consists of a 100-foot public area from the highway to Respondent's property line along its driveway. Entrance C's public area consists of 16 feet along its driveway. All the public areas of these entrance driveways contain a median separating the entrance and exit driveways, and a grassy area adjacent to the driveway.

The Union argues that handbilling in the public areas referred to above, at the three entrances to Respondent's facility, is unsafe, and cannot be deemed a reasonable, alternative means of communicating with the employees it sought to organize.

As set forth above, the General Counsel's witnesses testified that cars entered the driveways from the highways at a high rate of speed, making it unsafe to approach a car which had slowed or stopped in the driveway. Handbillers stood on each side of the entry driveway, thereby being available to give a handbill to the driver or passenger. There was also a danger of rear end collisions when cars entering the driveway slowed or stopped to receive a handbill when others exiting from the highway and following closely behind had to slow down quickly. Even assuming the accuracy of Respondent's radar study, which showed that vehicles entering the facility traveled at average speeds of approximately 16, 17, and 19 miles per hour, this supports General Counsel's position that at that entry speed, with vehicles entering continuously in the morning rush hour, a safety hazard existed when union agents entered the roadway to give a handbill to a car's occupant. The danger is apparent especially at entrances B and C where the driveway widened to two lanes within the public area. If a vehicle with no passenger stopped in the right lane to receive a handbill, the union agent would have to cross the left lane of traffic and stand in the left lane to give the flyer to the driver, or the handbiller standing on the passenger side would have to walk around the car to the driver side to give a flyer, or the driver would have to lean across the passenger side to receive it. All of these activities do constitute a danger to the handbiller and the vehicle. The Board has recognized that such handbilling on public highways constitutes a danger, and has found that such activity does not constitute a reasonable alternative means of communication. *Lechmere, Inc.*, 295 NLRB 92 (1989); *Sentry Markets*, 296 NLRB 40 (1989); *Best Co.*, 293 NLRB 845 (1989); *Mountain Country Food Store*, 292 NLRB 967 (1989). The fact that union agents successfully distributed handbills on the days that they were present at the entrances does not mean that such handbilling was safely conducted. It does not appear from the evidence that such handbilling was safely engaged in.

Respondent argues that such handbilling, if conducted in the evening rush hour, would be safe. It contends that vehicles leaving Respondent's premises would be staggered, leaving at different times, and thus able to slow down and receive a handbill. In addition, it states that as the vehicles left the premises they would be slowing to enter the highways. First, there is no evidence of these facts. The Union did not attempt to handbill in the evening rush hour. Moreover, it would appear that the only safe handbilling that could be conducted would be at entrance A where a traffic light controls egress from that entrance. Thus, when cars are stopped at that light, it would appear that handbillers could approach those halted vehicles safely. However, there was no evidence presented as to how many vehicles leave entrance A, as compared with the other entrances. Accordingly, no findings may be made as to these arguments.

It should be noted that if safely conducted, such handbilling would be effective. Certain of the cases set forth above noted that handbilling on public highways was ineffective because of uncertainty of the audience being reached by the handbilling, due to the presence, in the facility, of stores other than the target of the handbilling, and accordingly the occupants of vehicles entering the facility who may be patrons of other stores, or employees of other stores in the shopping center. In contrast, here the handbilling at Respondent's entrances was directly aimed at Respondent's employees. No other businesses are located at its facility, and the area is not open to public traffic. In addition, virtually all of its employees use private vehicles to enter its premises.

Respondent also argues that the Union could have utilized the public media to contact its employees, and supports its argument by stating that 48 percent of its nonsupervisory employees live in Westchester County, and over 84 percent live in five upstate counties of New York. The Board in *Jean Country*, above, stated that only in ''exceptional'' cases will the use of the mass media, including newspapers, be considered as a feasible alternative to direct contact. This case is not an exceptional one, and accordingly I do not find that such media contact would be a reasonable alternative means of communication.

Respondent further argues that the Union had reasonable, effective alternative means of communicating with its employees. It contends that by utilizing the parking lot directly across the street from entrance C, and maintaining a recreational vehicle thereon which bore a large sign identifying it as the organizational headquarters of the Union, it was thereby able to communicate its message to employees. I note that the vehicle was present at that lot for 10 months. Any employee who wished to could have received information about the Union at that vehicle. There was conflicting evidence, which I need not resolve, concerning whether the van was manned daily, as maintained by union witnesses, or not occupied at all, as contended by Respondent. Apparently, few if any of Respondent's employees visited the van. Either employees were not interested in the Union, or as contended by Respondent, the vehicle was not manned, or as argued by the Union, employees did not want to be seen entering the vehicle. I reject the Union's argument. Employees taking a handbill could also be fearful that their identity would become known by Respondent. The point is that the stationing of the recreational vehicle immediately opposite Respondent's entrance to its facility represents a significant presence of the Union at Respondent's facility. The effectiveness of its message, posted on the vehicle, would accordingly not be diluted because of the distance of the vehicle to the target of the communication, as was the case in *Jean Country*. In addition to the name of the Union, its phone number and other messages could be prominently displayed on it. In addition, organizational materials would be available at the vehicle, assuming it was occupied. I am aware that entrance C was the least used of the three entrances to Respondent's facility, and it is conceivable that employees using entrances A and B would never see the Union's message on the recreational vehicle. However, in view of the fact that about 28 percent of the employees use that entrance, it is likely that even those employees who do not use that entrance would have become aware of its presence by other employees, and would have been able to utilize it in order to obtain information about the Union if they were interested. Accordingly, I believe that the use of the recreational vehicle constitutes a reasonable effective alternative means of communication with Respondent's employees.

Respondent also argues that the Union could have utilized the resources of the Motor Vehicle Departments in Connecticut, New Jersey, and New York in order to obtain addresses of the employees it sought to organize. There was testimony that such information is available on request, for a fee, from

such agencies. The evidence was not precise as to the manner in which the request must be made. Respondent's witness made personal visits to the bureaus involved, and at the New York bureau was told that there was a limit of three registrations which may be processed at a personal visit. Respondent argues that this method of obtaining information concerning employees would be effective inasmuch as an ''overwhelming majority'' of its workers arrive at work by private vehicle and pass through one of its three entrances. No other businesses are located at the facility, and therefore the only vehicles entering and leaving Respondent's premises at the rush hour times are its employees. However, as stated by the Board in *Lechmere, Inc.*, the difficulty with such a method is that:

> employees may use cars that are not registered in their names, may car pool together, may use alternative means of transportation, or may park elsewhere. In addition, part-time employees might not use the parking lot at those times shortly before and after the store's designated opening hours.

Accordingly, although the use of motor vehicle records would seem to be an effective means of communicating with employees, the factors set forth above would tend to diminish the effectiveness of such a method, especially considering that a maximum of 312 of the 1100 employees, or 27 percent, who use the facility constitute the unit sought by the Union—secretarial, clerical and maintenance employees. I accordingly do not believe that the use of the motor vehicle registration information, *by itself*, is a reasonable, effective alternative means of communication. However, the Union's use of such records, combined with its use of the recreational vehicle did, I believe, constitute reasonable, effective alternative means of communication with Respondent's employees.

> The underlying principle at issue is one of accommodation—specifically, ''how to accommodate the exercise of rights guaranteed under Section 7 of the Act with a property owner's right to protect his property against intrusions by those whom he has not invited to enter.'' *Tecumseh Foodland*, 294 NLRB 486 fn. 7 (1989).

This accommodation must be obtained ''with as little destruction of one as is consistent with the maintenance of the other.'' *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956).

In balancing the respective rights, I find that Respondent's property interest would suffer an extraordinary impairment by granting the Union access to its main driveway for the purpose of handbilling entering cars as it did on November 30, 1989. In making this finding, I have considered the fact that the handbilling took place only 500 feet within its property line from entrance C. One's first impression is that this represents a minimal intrusion onto its property, and an insignificant invasion of its property right, especially considering that it owns 212 acres of land at this location. I have also considered the fact that the site of the handbilling took place about 1920 feet from its headquarters building and the handbilling did not interfere with any activities at that building. In addition, I have further considered the fact that during the 45 minutes of handbilling, during which about 100 cars passed the handbilling site, there was no evidence of any interference with the vehicles, other than the activity of handing the flyers to the vehicle occupant.

I make this finding because of the extraordinary showing made by Respondent of the totally private nature of this facility. In post-*Jean Country* cases, the Board, in holding that access to respondents' property should be permitted, has noted that such property had been open to the public.[3] Where, however, Respondent's property is not open to the public. Respondent has taken specific, substantial steps to ensure that only business invitees may enter its property. Accordingly, the intrusion of three nonemployee handbillers standing at the main intersection of the driveways in its facility resulted in a substantial infringement of Respondent's property rights. Accordingly, I find that inasmuch as the Union had reasonable, effective alternative means of communication with Respondent's employees, that its Section 7 rights were not ''severely impaired—substantially ''destroyed'' within the meaning of *Babcock & Wilcox* without entry onto Respondent's property.

It should be noted that on brief, the General Counsel requested an order requiring that access be permitted to Respondent's parking lot. Inasmuch as no attempt to handbill at the parking lot was made, that factual situation is not before me. I may only find, on this record, that the handbilling at the main intersection on November 30, 1989, was impermissible, and Respondent did not violate the Act by advising the Union's agents that they could not remain on Respondent's facility, ordering them to leave, and threatening them with arrest if they did not do so. In *Tecumseh Foodland*, supra, the Board found that the manner in which the union picketed and handbilled at an employer's entrance doors was improper. The Board's Order did not direct that they could picket and handbill in a proper manner. Rather the Board dismissed the complaint based on the conduct before it.[4]

In conclusion, as I find that Respondent did not violate Section 8(a)(1) of the Act by the conduct alleged in the complaint, I shall recommend that the complaint be dismissed in its entirety.

CONCLUSIONS OF LAW

1. The Respondent, Pepsi-Cola Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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[3] *Sentry Markets*, supra; *Lechmere, Inc.*, supra.

[4] Respondent takes issue with and moves to strike that part of the General Counsel's brief in which she argues that Respondent impermissibly ordered the Union's agents off public property. In view of my discussion of the issue of reasonable alternative means of communication, and the decision herein, I find it unnecessary to resolve this matter.

2. Respondent has not violated the Act in any way as alleged in the complaints.

On these findings of fact and conclusions of law and on the entire record, I make the following recommended[5]

ORDER

The complaint is dismissed in its entirety.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.